IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

RP.No. 1104 of 2006()

AGAINST THE JUDGEMENT/ORDER IN OP.4676/2002 Dated 14/07/2006

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: REVIEW PETITIONERS/RESPONDENTS:

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1. KERALA STATE ELECTRICITY BOARD,
   REP.BY SECRETARY, VYDHUTHI BHAVAN, PATTAM,
   TRIVANDRUM.

2. THE CHAIRMAN,
   KERALA STATE ELECTRICITY BOARD,
   VYDHUTHI BHAVAN, PATTAM,
   TRIVANDRUM.

3. THE ASST. EXECUTIVE ENGINEER,
   K.S.E. BOARD, ELECTRICAL TOWN,
   MAJOR SECTION, ALUVA.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS: PETITIONER:

SRI.AJU C MATHEW,
MANAGING PARTNER, NISSI POLYMERS,
INDUSTRIAL DEVELOPMENT ARA, ERUMATHALA P.O.,
ALUVA.

BY ADV. SRI.GEORGE POONTHOTTAM

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 13/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH, J.

C.M.Appln.No.1841 of 2006
and
R.P.No.1104 of 2006
in
O.P.No.4676 of 2002

Dated 13th DECEMBER, 2006.

O R D E R

C.M.Appln.No.1841 of 2006

Delay condoned.

R.P.1104/06

This is a petition to review the judgment dated 14.7.2006 in O.P.No.4676/02. The issue pertains to the steps taken by the review petitioners for realising proportionate energy charges on account of the alleged unauthorised load. Following the Division Bench judgment in W.A.1231/03, this Court held that there shall not be penalty by way of proportionate energy charges and that the penalty should be limited to the fixed charges.

2. Sri.C.K.Karunakaran, learned counsel appearing for the Board submits that the Division Bench only prohibited the levy of maximum penalty and the matter has to be decided on a case to case basis. I am afraid, the contention cannot be appreciated. Admittedly, there is no prescribed norm or guidelines in such situations to be examined on a case to case basis. That would

only pave way to unhealthy situations of arbitrariness. That apart, since the energy charges can be levied only for the measured energy, whether there is any scope at all for such examination is yet another issue, though Sri.Karunakaran contended that it is not the energy charges that is levied, but the penalty. If as a matter of fact it is the penalty that is levied, there is no purpose in using the expression 'proportionate energy charges'. Once the expression used is 'proportionate energy charges', that would only indicate the quantum of energy that could have been consumed by such installation using the said additional load, which is against the spirit of Section 26(6) of the Indian Electricity Act, 1910, since irrespective of the connected load, the energy consumed has already been properly measured and billed. In fact the Board itself in the case of commercial consumers has admitted and applied the above principle, as noted in the writ appeal judgment. In that view of the matter, there is nothing on merits to review the judgment. The review petition is hence dismissed.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

R.P.No.996 of 2006
in
O.P.No.39494 of 2002

J U D G M E N T

Dated 15th November, 2006.